



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-S-S-(USA) LLC

DATE: OCT. 13, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

APPLICATION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an international investment banking firm, seeks to classify the Beneficiary as an advanced degree professional. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner seeks to permanently employ the Beneficiary in the United States as an Assistant Vice President. The Director found that the Beneficiary did not meet the requirements for classification as an advanced degree professional, as he does not possess a U.S. or foreign equivalent advanced degree.

The Petitioner's appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms “advanced degree” and “profession.” An “advanced degree” is defined as:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1).

A “profession” is defined as “one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.” The occupations listed at section 101(a)(32) of the Act are “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

The beneficiary's degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an “official academic record showing that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree.” For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of “an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.” We cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that the beneficiary is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a “baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree.” (Emphasis added.) 56 Fed. Reg. 30703, 30706 (July 5, 1991).²

Thus, the plain meaning of the Act and the regulations is that the beneficiary of an advanced degree professional petition must possess, at a minimum, a degree from a college or university that is a U.S. baccalaureate degree or a foreign equivalent degree.

² Compare 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of “an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability”).

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As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).³ The priority date of the petition is March 22, 2013.⁴ Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master's degree in "CS, CIS, MIS, Engineering (any)," or related.
- H.5. Training: None required.
- H.6. Experience in the job offered: None.
- H.7. Alternate field of study: None.
- H.8. Alternate combination of education and experience: Bachelor's degree and 5 years of experience.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 24 months of experience in **Solaris, Linux, Unix, Sybase, Oracle, MySQL, Perl/Shell Scripting, FIX, INET, ARCA Direct, OUCH and/or CGI programming.
- H.14. Specific skills or other requirements: None. **Any suitable combination of education, training, or experience is acceptable: Solaris, Linux, Unix, Sybase, Oracle, MySQL, Perl/Shell Scripting, FIX, INET, ARCA Direct, OUCH and/or CGI programming.

In Part J of the labor certification the box "bachelors" is checked as the Beneficiary's "highest level [of education] achieved relevant to the requested occupation." The ETA Form 9089 further lists the Beneficiary's education in engineering from the [REDACTED] India, completed in 2002. The record contains a copy of the Beneficiary's diploma in mechanical engineering issued by the State Board of Technical Education and Training [REDACTED] India, in 1996.⁵ The record also contains a copy of the Beneficiary's Associate Member certificate, associate membership letter and transcripts from the [REDACTED] verifying his associate membership in [REDACTED] as of December 2002.

The Director issued a request for evidence (RFE) to the Petitioner, which noted the Petitioner's submission of information from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) that "states the beneficiary's education is comparable to [a] U.S. Bachelor's degree. It does not state that it is equivalent." The Director notified the Petitioner that the evidence submitted was not a degree and therefore the petition could not be approved as a professional position or for an advanced degree. The director requested a copy of the Beneficiary's official academic record showing he has a U.S. advanced degree to include the dates of attendance, area of concentration, date the Beneficiary received the degree, and the Beneficiary's transcripts in accordance with the regulation. In response, the Petitioner submitted several evaluations and cited again to the Beneficiary's Associate Membership certificate. The Petitioner did not, however, submit a bachelor's degree or foreign equivalent degree from a university as requested by the Director and required by the classification. The Director denied the petition and referenced *Snappnames v. Chertoff*, 2006 WL 3491005 *11 (D.Ore. Nov. 30, 2006) where the court found that

³ See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); see also 8 C.F.R. § 204.5(a)(2).

⁴ The priority date is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

⁵ The diploma is accompanied by corresponding transcripts from [REDACTED] India.

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“USCIS was justified in concluding that [REDACTED] membership was not a college or university degree for purposes of classification as a member of the professions holding an advanced degree.” As the Petitioner here only submitted evidence that the Beneficiary passed the [REDACTED] Section A and Section B examinations, but did not submit evidence that the Beneficiary had either a master’s degree or a bachelor’s degree [with five years of progressive experience] in one of the required fields of studies, the Director denied the petition.

The record contains an evaluation of the Beneficiary’s educational credentials prepared by [REDACTED] for the [REDACTED] on September 11, 2014. The evaluation states that the Beneficiary’s Associate Membership in [REDACTED] obtained following passage of Section A and Section B examinations is comparable to a bachelor’s degree in engineering by a regionally accredited college or university in the United States.

The record contains an evaluation of the Beneficiary’s educational credentials prepared by [REDACTED] on December 15, 2014. The evaluation states that the Beneficiary’s Associate Membership in [REDACTED] following successful completion of the Section A and Section B examinations is comparable to a bachelor’s degree in engineering by a regionally accredited college or university in the United States.

The [REDACTED] evaluations do not address the Beneficiary’s diploma in mechanical engineering from the State Board of Technical Education and Training.

The record contains an evaluation of the Beneficiary’s educational credentials from the American Association of Collegiate Registrars and Admissions Officers (AACRAO)⁶ prepared on October 31, 2014. AACRAO’s evaluation states that the Beneficiary’s 1996 diploma in mechanical engineering from the State Board of Technical Education and Training is equivalent to completion of High School and one year of undergraduate study at a regionally accredited college or university in the United States and that the Beneficiary’s Associate Membership in [REDACTED] based on passage of the Section A and Section B examinations is comparable to a bachelor’s degree in engineering by a regionally accredited college or university in the United States. We note that the AACRAO evaluation in the section labeled “Certificate, diploma, or degree” describes the Beneficiary’s Associate Membership in [REDACTED] as “Section A & B Examinations.” It does not describe the credential as a “bachelors,” or as any sort of degree.

The Electronic Database for Global Education (EDGE) was created by AACRAO. EDGE is “a web-based resource for the evaluation of foreign educational credentials.”⁷ We consider EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁸ EDGE

⁶ According to its website, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.” See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.*

⁷ See <http://edge.aacrao.org/info.php>.

⁸ In *Confluence International, Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that we provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco*

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confirms that the Beneficiary's diploma in mechanical engineering from the State Board of Technical Education represents "up to one year of university study in the United States" and his [REDACTED] Associate Membership "represents attainment of a level of education comparable to a bachelor's degree in the United States." "Part A and B is awarded upon completion of Section "A" examination basic commonalities and Section B examination consisting of compulsory, advanced commonality, discipline commonalities and specialization options courses in various Engineering Divisions . . . following the higher secondary certificate." [REDACTED] evaluation that the Petitioner submitted cited to the [REDACTED] Associate Membership information from EDGE.

As is explained above, for classification as an advanced degree professional, the Beneficiary must possess a foreign degree from a college or university that is equivalent to a U.S. bachelor's degree. Although the evaluations submitted, as well as EDGE confirms that Associate Membership in [REDACTED] is comparable to a U.S. bachelor's degree, it is not a degree from a college or university to qualify for classification as a professional.

The Petitioner contends that the instant case is distinguishable from *Snapnames*, 2006 WL 3491005 at 11, which the director cited to, because the instant Beneficiary holds a "degree from a single source of education." The court found in *Snapnames* that U.S. Citizenship and Immigration Services (USCIS) was justified in concluding that [REDACTED] membership was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree. The beneficiary in *Snapnames* held membership in [REDACTED] which, like [REDACTED] associate membership, is awarded upon completion of study courses, practical training and passage of examinations. Both are described as a "professional qualification" and "represents attainment of a level of education comparable to a bachelor's degree in the United States." <http://edge.aacrao.org>. As with [REDACTED] however, the [REDACTED] is not an institution of higher education that can confer a degree, but instead, students must pass exams and may fulfill other requirements before the professional society issues the member certificate. See [REDACTED] and [REDACTED] (accessed September 24, 2015). Therefore, the Beneficiary does not possess a "foreign equivalent degree" within the meaning of 8 C.F.R. § 204.5(k)(2).

After reviewing all of the evidence in the record, it is concluded that the Petitioner has not established that the Beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty to meet the terms of the certified labor certification. The Beneficiary does not meet the terms of the certified labor certification. He does not meet either the primary requirement of H.4 of a master's degree, or the alternative requirement in H.8 of

Group, Inc. v. Napolitano, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification required a degree and did not allow for the combination of education and experience.

a bachelor's degree followed by five (5) years of progressive experience. Therefore, the Beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

As the Beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act, the director's decision denying the petition is affirmed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C-S-S-(USA) LLC*, ID# 13537 (AAO Oct. 13, 2015)